

## **FINAL MINUTES**

Pesticide Control Board  
Oliver W. Hill Building, Richmond, VA  
January 17, 2008

The Pesticide Control Board met at 9:00 a.m. at the Oliver W. Hill Building, Richmond, VA. Presiding members were Donald Fritz, Chairman and the Executive Secretary.

The following Board members were present: Dr. William Boshier; Dr. George Brown; Donald Fritz; Carl Garrison, III; Richard Nunnally; Mark Tubbs; Linda Wallace (via telephone); Liz White and Joe Wilson. The following Board members were absent: Robin Rinaca; Dr. Alma C. Hobbs, (represented by Dr. Asmare Atalay); and Dr. Sharron Quisenberry (represented by Dr. Michael Weaver).

The following staff members were present: Dr. Wayne Surles; Donald Blankenship; Andres Alvarez; Liza Fleeson; Douglas Edwards; Joe Dictor; Kathy Dictor; Vickie Rengers; Micah Raub; Robert Bailey; Elaine Lidholm; Scott Johnson and Rhonda Bates.

Others present: Andrea Coron, Jeff Johnson, Jason Leonard, Beth Duncan and Pete Smith, VA Pest Management Association; Laurie Coulter, Jim Oliver, VA Crop Production Association; Jack Horsley, Terminix; Jim Fredericks, Home Paramount; Gena Lupini, Loyal Termite & Pest Control; Marshall Trammell, Citizen; David McCormick, Dow Agrosience; Hayden Fisher, Schaffer & Cabell; Eric Gregory, Office of the Attorney General; and Susan Nessler, VA Tech.

### **CALL TO ORDER**

Chairman Fritz called the meeting to order.

### **DETERMINATION OF A QUORUM**

Chairman Fritz announced that a quorum was present. He informed all that Dr. Surles is retiring April 1 and further stated that he has done an outstanding job and will be missed.

### **APPROVAL OF MINUTES**

Ms. White moved to adopt the minutes of the October 18, 2007, Board meeting. The motion was properly seconded. Before voting to approve the minutes, Dr. Surles stated that the minutes and the Board directory were corrected to reflect that Ms. White represents Commercial Sale/Applicator and Ms. Wallace represents Production/Agriculture. The motion carried unanimously.

### **COMPLIANCE ACTIVITIES FOR THE QUARTER**

Joe Dictor provided a summary of enforcement activities for the quarter.

Mr. Tubbs, Chair of the Enforcement Committee, presented three cases that required Board approval. In case 30475 involving Valley Termite Pest Control Service, the Hearing Officer reduced the \$400 civil penalty to \$280. Mr. Tubbs moved to accept the recommendation of the Hearing Officer. Dr. Brown seconded. Motion carried unanimously.

In case 29022 involving Asplundh Tree Expert Company (Asplundh), the Hearing Officer upheld the \$7500 civil penalty assessed. Mr. Tubbs asked that the following excerpt from the Hearing Officer's report be read into the record. Page 7, states, in part, "...the Office of Pesticide Services (OPS) has been charged by society with the critical task of administering the Act in this regard, and hearing officers should not succumb to the temptation to substitute their judgment for that of OPS representatives where OPS has reasonably interpreted and applied the Act's rules, regulations and administrative policies and procedures. OPS in exercising its considered professional judgments concerning violation of the Act and related civil penalties should be afforded significant professional autonomy and if OPS interprets and applies applicable policies, procedures, rules and regulations reasonably, it should not be easily second-guessed by reviewing persons. Concerning the issues appealed in this proceeding, OPS clearly acted reasonably in both interpreting and applying all applicable policies, procedures, rules and regulations. ...OPS has satisfied its burden of proof concerning all items appealed in this proceeding." Mr. Tubbs noted that Attorney Hayden Fisher was present on behalf of Asplundh. Mr. Fisher asked that staff give him an opportunity to negotiate a settlement.

Mr. Tubbs moved to accept the Hearing Officer's report and to discuss the Asplundh defense counsel's request. Dr. Brown seconded. Dr. Boshier offered a substitute motion that the Board defers the issue until the April meeting pending discussion between staff, counsel, and the Attorney General's office. Mr. Wilson seconded. Substitute motion carried unanimously.

In cases 27773, et al, (17 cases total) involving Blue Ridge Pest & Termite Control (Blue Ridge), the Hearing Officer recommended a mutually acceptable consent order be drawn up between the Pesticide Control Board and Blue Ridge. A draft of the consent order was provided to all Board members. Mr. Tubbs moved to accept the consent order. Dr. Brown seconded. After much discussion, the motion was rejected unanimously. Mr. Tubbs encouraged the Board to send all comments/changes to staff for inclusion in a revised consent order, which is to be presented to the Hearing Officer. Mr. Tubbs directed that the Hearing Officer's final ruling would be presented to the Board.

### **ADOPTION OF FAST TRACK AMENDMENTS**

Ms. Dictor presented changes to regulations currently undergoing periodic review as initiated by the Office of the Attorney General. These three regulations have already been opened for public comment; no comments were received. The Office of the Attorney General has recommended certain non-controversial “housekeeping” changes and the Board is asked to consider the changes as follows:

**2 VAC 20-10, Public Participation Guidelines – the changes update three references to the Administrative Process Act to the correct section of the code of Virginia.** Mr. Nunnally moved that the Board adopt the proposed amendments to 2 VAC 20-10, Public Participation Guidelines, presented by staff, and that the Board authorize staff to take any and all steps necessary to make these amendments final through the fast track regulatory process permitted by state law. Mr. Wilson seconded. Motion carried unanimously.

**2 VAC 20-20, Rules and Regulations for the Enforcement of the Virginia Pesticide Law – the changes update the name and address of the Office of Pesticide Services, remove two references to sections of the Code of Virginia which have been repealed, and update the publication date of the product registration form.** Mr. Nunnally moved that the Board adopt the proposed amendments to 2 VAC 20-20, Rules and Regulations for the Enforcement of the Virginia Law, presented by staff, and that the Board authorize staff to take any and all steps necessary to make these amendments final through the fast track regulatory process permitted by state law. Dr. Brown seconded. Motion carried unanimously.

**2 VAC 20-40, Rules and Regulations Governing Licensing of Pesticide Businesses – the only change is a suggested addition to specifically allow records to be submitted to the Commissioner electronically.** Mr. Nunnally moved that the Board adopt the proposed amendments to 2 VAC 20-40, Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of the Virginia Pesticide Control Act, presented by staff, and that the Board authorize staff to take any and all steps necessary to make these amendments final through the fast track regulatory process permitted by state law. Mr. Garrison seconded. Motion carried unanimously.

### **ADOPTION OF AMENDMENTS TO 2 VAC 20-51 OF RULES AND REGULATIONS GOVERNING PESTICIDE APPLICATOR CERTIFICATION AS FINAL**

Ms. Dictor stated that this regulation is before the Board to consider as final. She pointed out that there has been one change to this amendment between the proposed stage and the final stage, found on page 12, section in brackets which addresses the certification process for registered technicians. Mr. Nunnally moved that the Board adopt as final the proposed amendments to 2 VAC 20-51, Regulations Governing

Pesticide Applicator Certification under Authority of the Virginia Pesticide Control Act, and that staff be authorized to take any and all steps necessary or appropriate under the Administrative Process Act concerning these amendments. Mr. Wilson seconded. Motion carried unanimously.

### **RECODIFICATION OF THE VIRGINIA PESTICIDE CONTROL ACT (Delegate Landes HB 1331)**

Dr. Boshier voiced concern that the Board had not seen a draft of HB 1331, Chapter 39, regarding recodification of the Virginia Pesticide Control Act, which is already in committee at the General Assembly, and questioned whether there were any substantive changes made affecting the Board. He asserted that he was "very concerned that there is discussion with lobbyists and other interested parties... but not with the Board." Chairman Fritz deferred to Mr. Blankenship who stated that the Code Commission does not make substantive changes but works to clarify archaic language, clean it up, etc. Mr. Blankenship said that Wayne and Andy attended the code commission working group meetings, and asked the two of them to address those questions. Mr. Alvarez stated that in his opinion there were no substantive changes that will alter how the Board operates, the power, the authority or the interaction with the program. Chairman Fritz recognized Marshall Trammell, Jr. who said that significant changes were made to HB 1331, Chapter 39, and that the Board needs to carefully examine this document. Dr. Boshier suggested that a request be made to the Commissioner, the Secretary, Delegate Landes and the appropriate committees to defer their decision until the Board has had an opportunity to speak to the changes. Mr. Blankenship stated that staff has the expertise to define the technical parts of the bill. Mr. Wilson recommended that Board members submit all changes to Dr. Surles who will compile them and send to Mr. Alvarez, who indicated that he would respond to changes of substantive concern. Mr. Blankenship informed the Board that future changes and corrections could be effected at the 2009 meeting of the General Assembly and actions could be initiated next September/October.

### **PUBLIC COMMENT PERIOD**

Laurie Coulter, VACPA, stated that the VACPA Board is divided on holding individuals responsible for violations generating civil penalties. VACPA would like to see the name of the violator published. Dick Fisher, VA Turfgrass Council, expressed the same sentiment as Ms. Coulter. He said VA Turfgrass Council doesn't have a position on the issue but feels the applicator should be held responsible for his action; he offered the Turfgrass Council's help in exploring this further.

### **PRESENTATION ON THE ENFORCEMENT SECTION, OFFICE OF PESTICIDE SERVICES**

Mr. Edwards introduced his staff via a powerpoint presentation and defined the duties each performed as well as the operational procedures of the unit.

### **UPDATE ON DISPOSAL AND RECYCLING PROGRAMS**

Ms. Fleeson provided the final reports for the 2007 Pesticide Disposal Program and the Plastic Pesticide Container Recycling Program. She reported that the disposal program was held in South Central VA, with eight collection sites in a 26 county/city area, and collected 76,249 pounds of pesticides. The 2008 program will be held in Southwest VA, on or about September or October.

The Container Recycling program included 19 localities and eight dealers, with a total of 36,135 containers collected. This program has been well received.

### **STATUS OF PESTICIDE APPLICATOR SAFETY TRAINING PROGRAM**

Dr. Weaver and Susan Nessler provided updates on the status of manual development and on the pesticide applicator training programs. Dr. Weaver reported that planning for the 2008 Pesticide Safety Educators Workshop has already begun; the workshop will be held at the Hotel Roanoke on October 8 and 9, 2008.

Ms. Nessler reported that two training manuals were reprinted and three new manuals have been released.

### **EXECUTIVE SECRETARY'S REPORT**

Dr. Surles introduced Micah Raub who has been promoted to Program Coordinator for Product Registration/Worker Protection Standard and reported that Kathy Dictor has been promoted to Supervisor of the Certification, Licensing, Registration, and Training Section. He gave honorable mention to recipients of the annual VDACS awards – Reba Gilliam, Administrative/Clerical and Jeff Rogers – Technical/Professional.

He reported on the enforcement component of the Termite Enforcement Plan noting that since initiation, twenty-three civil penalties totaling \$71,400 were levied on eight companies; and 100 inspections are planned for 2008. Dr. Surles gave the floor to Andrea Coron, VPMA, who reported on the education component of the Plan. She said that in November, the VPMA conducted the first four regional workshops, training 209 pest management professionals; however, the goal for the whole grant was to train 800 people in seven workshops. The decline in numbers is attributed to: 1) a large number of technicians trained in 2006 were from member companies who didn't see the need to repeat the training; and 2) a general slow down nationally in new construction has drastically reduced the need for pretreats in Virginia. The VPMA can reasonably expect to train about 350 technicians this spring. The pre and post test scores have been tabulated and a comparison of the first year's test to the second year's test will be used to develop a scale score that allows for partial credit on calculations, honing in on the real results of the testing.

Dr. Surles ended his report stating that he has enjoyed working at VDACS and having an opportunity to serve Virginia.

**COMMISSIONER'S/DEPUTY COMMISSIONER'S REPORT**

Mr. Blankenship thanked Dr. Surles on behalf of VDACS for all the work he has done. He reported that the Governor's budget reductions strategy has been carried over to the next biennium budget. He also stated that the Department of Charitable Gaming will be transferred to VDACS, and that there is one agency legislative proposal affecting VDACS, but no pesticide related bills.

**CHAIRPERSON'S REPORT**

Chairman Fritz directed Board members to send their comments concerning HB 1331, Chapter 39, to Dr. Surles by COB January 25, 2008.

**ADJOURNMENT**

Meeting adjourned at 12:30 p.m.

**(For further detail, taped minutes of the meeting are on file at VDACS and can be accessed by calling 804/225-2223.)**